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7-10-03

P&G Case CM1189Q

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the application of :
Achim Schmitt : Confirmation No. 9441
Serial No. 09/242,014 : Group Art Unit 3761
Filed April 5, 1999 : Examiner Jamisue A. Webb

For Disposable Absorbent Article with Wings Predisposed Towards Their In-Use-Position

BRIEF ON APPEALS

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

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JUL 09 2003

TECHNOLOGY CENTER R3700

Dear Sir:

Enclosed, pursuant to 37 C.F.R. 1.192(a), is Appellant's brief on Appeal for the above application. The Brief is being forwarded in triplicate.

Please charge the fee of \$320.00 pursuant to 37 C.F.R. 1.17(c) to Deposit Account No. 16-2480 for the filing of the brief in support of an appeal. The Commissioner is also authorized to charge any additional fees which may be required to this account. A duplicate copy of this sheet is enclosed.

Respectfully submitted,

By

KC
Kevin C. Johnson

Attorney or Agent for Applicant(s)
Registration No. 35,558
(513) 634-3849

Date: July 1, 2003

Customer No. 27752

(BriefonAppealTrans.doc)
(Last Revised 4/3/2003)

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P&G Case CM1189Q

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the application of :
Achim Schmitt : Confirmation No. 9441
Serial No. 09/242,014 : Group Art Unit 3761
Filed April 5, 1999 : Examiner Webb, Jamisue A
For DISPOSABLE ABSORBENT ARTICLE WITH WINGS PREDISPOSED TOWARDS
THEIR IN-USE-POSITION

APPELLANTS' BRIEF

Mail Stop Appeal Brief - Patents'
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

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JUL 09 2003

TECHNOLOGY CENTER R3700

Dear Sir,

This appeal of Claims 1 and 6-9, currently pending in the above application, that were finally rejected by the Examiner in an Office Action dated May 14, 2003. The Appellants submitted a timely Notice of Appeal on June 3, 2003. Appellants' brief is submitted in triplicate.

REAL PARTY IN INTEREST

The Appellants who are named in the caption of the Brief have assigned this application to The Procter & Gamble Company of Cincinnati, Ohio.

RELATED APPEALS AND INTERFERENCES

Appellants, Appellants' legal representative, and the assignee are not aware of any appeals or interferences which would be directly affected by or have a bearing on the Board's decision in the pending Appeal.

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STATUS OF CLAIMS

Claims 1 and 6-9 are rejected. Claims 6-9 are cancelled. Claim 1 is being appealed. A copy of Claim 1 on appeal appears in the attached Appendix A.

STATUS OF AMENDMENTS

Appellants' have not filed an amendment subsequent to the Final rejection of the claims. The Appellants' are appealing from a Final rejection of Claims mailed on May 14, 2003 in which the Examiner considered the response to an Office Action filed on June 14, 2002 unpersuasive.

SUMMARY OF INVENTION

The Appellants' present invention relates to a disposable absorbent article for wearing in an undergarment. The disposable absorbent article comprises a longitudinal axis, a transverse axis, and a main body portion that has longitudinal side edges substantially extending parallel to the longitudinal axis and has transverse side edges substantially extending parallel to the transverse axis. The main body portion further includes a wearer facing surface and a garment facing surface. The disposable absorbent article comprises side wrapping elements that are integral with the main body portion. The side wrapping elements are folded along fold lines and attached to the garment facing side of the main body portion such that the side wrapping elements are pre-positioned in an in-use-position prior to the use of the disposable absorbent article.

ISSUE

Whether Claim 1 is unpatentable under 35 U.S.C. § 102(b) as being anticipated by Widlund (U.S. Patent No. 5,454,804).

GROUPING OF CLAIMS

Claim 1 is within the same patentable grouping and will stand and fall together.

ARGUMENTS

Whether Claim 1 is unpatentable under 35 U.S.C. § 102(b) as being anticipated by Widlund (U.S. Patent No. 5,454,804).

Claim 1 stands rejected under 35 USC 102 (b) as being anticipated by Widlund (U.S. Patent No. 5,454,804).

The Appellants respectfully traverse the rejection. Widlund discloses a sanitary napkin for wearing in the crotch portion of a pair of underpants, with longitudinal and transversal side edges, a wearer facing topsheet and a garment facing backsheet, and with flexible side flaps that are intended to be folded around the edges of the leg openings of the wearer's underpants. The Office Action contends that Widlund discloses that the side flaps can be formed by having the casing sheets extend beyond the side edges of the absorbent core, integral, (column 2, lines 19-23) or the side flaps can be separate elements from the main body portion and are attached along the longitudinal edge of the garment wearing casing sheet (Figure 3). The Office Action states that the term "integral" is construed as a relatively broad term and is not necessarily restricted to a one-piece article, it is sufficiently broad to embrace constructions united by such means as fastening and welding. The Office Action also states that Widlund discloses the flaps being attached to the side edges of the main body portion, therefore are integral with the main body portion, since the flaps and the main body portion form one whole unit, the sanitary napkin.

The Appellants' invention provides for side wrapping elements on a disposable absorbent article that are folded along fold lines such that the side wrapping elements are positioned in an in-use-position prior to use of the disposable absorbent article. Original Claim 1, as filed, covered two distinct embodiments providing side wrapping elements positioned in an in-use-position prior to use of the disposable absorbent article. The first embodiment had side wrapping elements made of separate pieces from the main body. The separate pieces were attached to the main body along the longitudinal side edges of the main body. The second embodiment had side wrapping elements that were integral with the main body portion. However, amended Claim 1 is directed to only the second embodiment having side wrapping elements that are integral with the main body portion.

Widlund clearly teaches flaps that are formed of separate pieces of material that are attached to respective side or longitudinal edges of an absorbent pad, (See *Widlund* column 1, lines 7-14). The Office Action references column 2, lines 19-23 of Widlund in an attempt to find support for the position that the side flaps of Widlund are integral with the main body. This passage of Widlund does not stand for this proposition. In fact, this passage is distinguishing

Widlund from the prior art. Moreover, the passage states that the separately attached flaps of Widlund has an advantage over the integral wings of the prior art by saving material and manufacturing time. Thus, any notion that this passage teaches flaps that are integral with the main body is clearly erroneous.

In another attempt to find Widlund to be an anticipatory reference, the Office Action interprets the term “integral” to include separately attached flaps. As stated above, original Claim 1 covered two embodiments, a first with separately attached side wrapping elements and a second with integral side wrapping elements. Amended Claim 1 covers only the second embodiment directed to integral side wrapping elements. The term “integral” was clearly distinguished from separately attached in the Appellants’ application as filed. Page 4, lines 16-23 and 31-35 of the Appellants’ specification sets forth the differences:

“If the side wrapping elements are provided as separate pieces from the main body portion they are attached to the main body portion in their in-use-position, preferably to the garment facing surface and along the longitudinal side edges of the body portion of the disposable absorbent article.

In an alternative embodiment of the absorbent article the side wrapping elements are integral with the main body portion extending transversely away from the lateral axis of the absorbent article.”

“If the side wrapping elements are integral with the main absorbent body of the absorbent article they can be integral extensions of the topsheet which provides the wearer facing surface of the main body portion and/or integral extensions of the backsheet of the main body portions which provide the garment facing surface of the main body portion.”

As shown in the above passages, “integral” embodiments and “separately attached” embodiments are described as mutually exclusive and exhaustive categories. Thus, the term “integral” cannot mean both extensions of the topsheet and/or backsheet and separately attached pieces of material as this would be inconsistent with the specification.

From this evidence, Widlund does not teach or suggest each and every element within Claim 1. Because Widlund fails to teach or disclose each and every element of Claim 1, Widlund does not anticipate Claim 1.

SUMMARY

In view of all of the above, Appellants respectfully submit that Claim 1 is not anticipated by Widlund (U.S. Patent No. 5,454,804). Accordingly, Appellants respectfully request the Board of Patent Appeals and Interferences to reverse the Examiner's rejection, and remand with directions to allow Claim 1 of the present application.

Respectfully submitted,

By



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Date: July 1, 2003
Cincinnati, OH

APPENDIX A

1. Disposable absorbent article (20) for wear in an undergarment, comprising: a longitudinal axis (L) and a transverse axis (T), said disposable absorbent article comprising a main body portion (21) having longitudinal side edges (23) substantially extending parallel to said longitudinal axis (L) and having transverse side edges (22) substantially extending parallel to said transverse axis (T), said main body portion (21) further having a wearer facing surface and a garment facing surface, and said disposable absorbent article comprising side wrapping elements that are integral with said main body portion (21) said wrapping elements being folded along fold lines and attached to said garment facing side of said main body portion such that said side wrapping elements are pre-positioned in an in-use-position prior to the use of the disposable absorbent article.